

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

IN RE APPLICATION OF:

LEVIN ET AL.

SERIAL NO.: To Be Assigned

FILED: Even Date Herewith

FOR: HERBICIDE TARGET GENES AND  
METHODS

**PRELIMINARY AMENDMENT**

BOX: PATENT APPLICATION

Commissioner for Patents

Washington, D.C. 20231

Sir:

Please enter the following amendments prior to the examination of this application.

**IN THE CLAIMS:**

Please cancel claims 2, 5-8 and 15-20 without prejudice or disclaimer.

Please amend claims 1, 3-4, 9, 11 and 14 as follows:

1. (Amended) An isolated nucleic acid molecule comprising a nucleotide sequence that hybridizes to the nucleic acid molecule of SEQ ID NO: 9, or to the complement of the nucleic acid molecule of SEQ ID NO: 9, in 7% sodium dodecyl sulfate (SDS), 0.5 M NaPO<sub>4</sub>, 1 mM EDTA at 50°C with washing in .1X SSC, 0.1% SDS at 65°C.

3. (Amended) The nucleic acid molecule of claim 1, wherein said nucleotide sequence is a plant nucleotide sequence.
4. (Amended) The nucleic acid molecule of claim 1, wherein said nucleotide sequence encodes a plant 1-deoxy-D-xylose-5-phosphate reductoisomerase protein.
9. (Amended) An expression cassette comprising a promoter operatively linked to a nucleic acid molecule comprising a nucleotide sequence that hybridizes to the nucleic acid molecule of SEQ ID NO: 9, or to the complement of the nucleic acid molecule of SEQ ID NO: 9, in 7% sodium dodecyl sulfate (SDS), 0.5 M NaPO<sub>4</sub>, 1 mM EDTA at 50°C with washing in .1X SSC, 0.1% SDS at 65°C.
11. (Amended) A host cell comprising a nucleic acid molecule comprising a nucleotide sequence that hybridizes to the nucleic acid molecule of SEQ ID NO: 9, or to the complement of the nucleic acid molecule of SEQ ID NO: 9, in 7% sodium dodecyl sulfate (SDS), 0.5 M NaPO<sub>4</sub>, 1 mM EDTA at 50°C with washing in .1X SSC, 0.1% SDS at 65°C.
14. (Amended) A plant of claim 13, wherein said plant is tolerant to an inhibitor of a plant 1-deoxy-D-xylose-5-phosphate reductoisomerase protein.

#### REMARKS

Upon entry of this amendment, claims 1, 3-4, 9-14 and 21-33 are pending. Claims 2, 5-8, and 15-20 have been cancelled without prejudice. Claims 1, 3-4 and 9-14 were the non-elected claims of Group I in the parent application serial no. 09/480,921. The present divisional application is being filed to pursue non-elected claims. Claims 1, 3-4, 9, 11, and 14 have been amended to more clearly define that which is regarded as the invention. Relative to the parent application 09/480,921, the instant application has claims 21-33 added. No new matter has been added by this amendment. Accordingly, entry of the amendment is respectfully requested.

Request for Interference

Upon entry of this amendment, applicant respectfully seeks to have an interference declared with US Patent 6,281,017 (hereinafter referred to as the '017 patent) and US Patent 6,303,365 (hereinafter referred to as the '365 patent) under 37 CFR 1.607.

Instant Application's Correspondance to the '017 Patent

Claims 1, 3-4, and 9-12 of the instant application are drawn substantially to the same Invention as that of Claim 1, 2, 5, 7, 8, and 10-15 of the '017 patent, wherein claim 1 of the instant application corresponds substantially to at least claim 1 of the '017 patent, claim 3 of the instant application corresponds substantially to at least claim 2 of the '017 patent, claim 4 of the instant application corresponds substantially to at least claim 2 of the '017 patent, claim 9 of the instant application corresponds substantially to at least claim 7 of the '017 patent, claim 10 of the instant application corresponds substantially to at least claim 7 of the '017 patent, claim 11 of the instant application corresponds substantially to at least claim 12 of the '017 application, and claim 12-14 of the instant application correspond substantially to at least claim 14 of the '017 patent.

Accordingly, Applicants respectfully request that the Patent and Trademark Office declare an interference between this application and the '017 patent.

Instant Application's Correspondance to the '365 Patent

Applicant's have copied claims 1-13 of the '365 patent into the instant application as claims 21-33, wherein,

claim 21 corresponds to claim 1 of the '365 patent,  
claim 22 corresponds to claim 2 of the '365 patent,  
claim 23 corresponds to claim 3 of the '365 patent,  
claim 24 corresponds to claim 4 of the '365 patent,  
claim 25 corresponds to claim 5 of the '365 patent,  
claim 26 corresponds to claim 6 of the '365 patent,

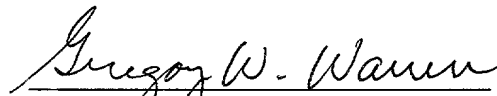
claim 27 corresponds to claim 7 of the '365 patent,  
claim 28 corresponds to claim 8 of the '365 patent,  
claim 29 corresponds to claim 9 of the '365 patent,  
claim 30 corresponds to claim 10 of the '365 patent,  
claim 31 corresponds to claim 11 of the '365 patent,  
claim 32 corresponds to claim 12 of the '365 patent, and  
claim 33 corresponds to claim 13 of the '365 patent.

The only change made to the copied claims was a substitution of the instant application's SEQ ID NO: for that used in the '365 patent. Therefore, claims 21-33 of the instant application remain substantially identical to claims 1-13 of the '365 patent. Accordingly, Applicants respectfully request that the Patent and Trademark Office declare an interference between this application and the '365 patent.

Attached hereto is a marked up version of the changes made to the claims by the current amendment. The attached page is captioned **"Version With Markings To Show Changes Made"**.

It is believed that no Extension of Time is required. However, if it is deemed that any other fees are necessary to maintain pendency of this application, then the Office is hereby authorized to charge Deposit Account No. 50-1744 (in the name of Syngenta ) for payment of such fees.

Respectfully submitted,

  
Gregory W. Warren  
Agent for Applicants  
Reg. No. 48,385  
Phone: 919-541-8646

Syngenta Biotechnology, Inc.  
Patent Department  
P. O. Box 12257  
Research Triangle Park, NC 27709-2257

Date: January 14, 2002

**VERSION WITH MARKINGS TO SHOW CHANGES MADE**

1. (Amended) An isolated [DNA] nucleic acid molecule comprising a nucleotide sequence [encoding an amino acid sequence substantially similar to SEQ ID NO:2, SEQ ID NO:4, SEQ ID NO:6, SEQ ID NO:8, or] SEQ ID NO:10.] that hybridizes to the nucleic acid molecule of SEQ ID NO: 9, or to the complement of the nucleic acid molecule of SEQ ID NO: 9, in 7% sodium dodecyl sulfate (SDS), 0.5 M NaPO<sub>4</sub>, 1 mM EDTA at 50°C with washing in .1X SSC, 0.1% SDS at 65°C.
3. (Amended) The [DNA] nucleic acid molecule according to claim 1, wherein said nucleotide sequence is a plant nucleotide sequence.
4. (Amended) The [DNA] nucleic acid molecule of claim 1, wherein [the amino acid] said nucleotide sequence [has 245, 5283, 2490, 3963, or 4036 activity] encodes a plant 1-deoxy-D-xylose-5-phosphate reductoisomerase protein.
9. (Amended) An expression cassette comprising a promoter operatively linked to a [DNA] nucleic acid molecule comprising a nucleotide sequence [encoding an amino acid sequence substantially similar to SEQ ID NO:2, SEQ ID NO:4, SEQ ID NO:6, SEQ ID NO:8, or SEQ ID NO:10] that hybridizes to the nucleic acid molecule of SEQ ID NO: 9, or to the complement of the nucleic acid molecule of SEQ ID NO: 9, in 7% sodium dodecyl sulfate (SDS), 0.5 M NaPO<sub>4</sub>, 1 mM EDTA at 50°C with washing in .1X SSC, 0.1% SDS at 65°C.
10. (Amended) A host cell comprising a [DNA] nucleic acid molecule comprising a nucleotide sequence [encoding an amino acid sequence substantially similar to SEQ ID NO:2, SEQ ID NO:4, SEQ ID NO:6, SEQ ID NO:8, or SEQ ID NO:10] that hybridizes to the nucleic acid molecule of SEQ ID NO: 9, or to the complement of the nucleic acid molecule of SEQ ID NO: 9, in 7% sodium dodecyl sulfate (SDS), 0.5 M NaPO<sub>4</sub>, 1 mM EDTA at 50°C with washing in .1X SSC, 0.1% SDS at 65°C.

14. (Amended) A plant of claim 13, wherein said plant is tolerant to an inhibitor of [245, 5283, 2490, 3963, or 4036 activity] a plant 1-deoxy-D-xylose-5-phosphate reductoisomerase protein.